NO. 49282-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

J.Y.-H.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THRUSTON COUNTY,
JUVENILE DIVISION

The Honorable Christopher Wickham, Judge

BRIEF OF APPELLANT

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INTRODUCTION

This case presents the issue of whether a juvenile has the right to act in self-defense against minor injuries inflicted by a parent, or if a juvenile may only defend against serious injuries.

Thirteen-year-old J.Y.-H. kicked her mother, Jacklynn Ahmed, in the shin. Although the parties' description of events differed somewhat, it was undisputed that just prior, J.Y.-H. was seated when Ahmed grabbed her by the hood of her sweatshirt and pulled upward, in an effort to physically force her to move. J.Y.-H. slipped out of her sweatshirt and retreated back to her seated position. The trial court found that J.Y.-H. sustained minor injuries in the form of visible marks on her upper arm, and that Ahmed intended to grab her by the arm to again force her to move. However, despite directly relevant case law to the contrary, the trial court concluded J.Y.-H. had no legal right to defend herself because Ahmed's conduct conformed to the limits of the parental discipline statute.

This Court should reaffirm the right of a juvenile to defend herself against injury, even minor injury, by a parent, and should reverse J.Y.-H.'s conviction for fourth degree assault.

A. ASSIGNMENTS OF ERROR

1. The trial court misapplied the law in conflating the analysis of reasonable parental force with the juvenile's claim of self-defense.

2. To the extent the trial court may also have misapplied the legal standard for resisting arrest by a law enforcement officer, to a juvenile resisting force by a parent, this was also in error.

3. The trial court erred in finding, predicated upon its improper legal analysis, that Ahmed was "using a fairly minimal amount of force" and this force "was reasonable and moderate." E.g. RP 105.

4. The trial court erred in making the following findings regarding J.Y.-H.'s fear of force or injury, also predicated upon its erroneous legal analysis:

a. There was "no evidence other than the pulling of the sweatshirt to raise a reasonable basis for fear of infliction of serious force against [J.Y.-H.]." E.g. RP 106.

b. J.Y.-H. lacked a reasonable basis and subjective fear that "she was going to be hurt sufficient to raise the self-defense defense to an assault." E.g. RP 106.

c. "The use of force to resist is an assault unless there is a reasonable belief that you're going to be injured. I do not find that occurred here." E.g. RP 107.

Issues pertaining to assignments of error.

1. RCW 9A.16.100 states that a parent does not violate the law by using force where he or she is engaged in reasonable parental discipline. Did the trial court err in concluding this statute negated the child's self-defense claim against the parent?

2. Washington jurisprudence precludes the use of self-defense to resist arrest by a law enforcement officer, unless the arrestee faces serious injury or death from the officer's excessive use of force. See WPIC 17.02.01. Did the trial court erroneously apply this legal standard to J.Y.-H.'s self-defense claim against a parent?

3. Was the trial court's finding that Ahmed used "minimal," "reasonable" and "moderate" force not supported by the record where undisputed testimony established that Ahmed pulled up on J.Y.-H.'s sweatshirt so hard that she involuntarily took two steps backward when J.Y.-H. slipped out of the sweatshirt? RP 44-55 (testimony), 105 (finding).

4. Were the trial court's findings—that J.Y.-H. lacked sufficient fear of injury or force—in error where the court also found J.Y.-H. had marks on her arm immediately after Ahmed pulled up on her sweatshirt, and that Ahmed was intending to use similar physical force against her again? RP 104, 106-07 (findings).

B. STATEMENT OF THE CASE

1. Charge and Trial Testimony

The Thurston County Prosecutor's Office charged J.Y.-H. with one count of fourth degree assault, domestic violence, against her mother, Jacklynn Ahmed. CP 5-6. At the juvenile bench trial, both J.Y.-H. and her mother testified. RP 33-58, 60-85.

Then thirteen-year-old J.Y.-H. and her mother argued about her use of a cell phone and her plans to go to the mall. RP 52, 61. Ahmed ordered J.Y.-H. to her room and she went. RP 52, 61-62. J.Y.-H. testified that her mother followed her there and shouted at her. RP 92. Ahmed denied going to J.Y.-H.'s room. RP 53. Thirty to sixty minutes later, J.Y.-H. went downstairs to the kitchen and seated herself on the floor facing the wall in an alcove next to the refrigerator. RP 43, 53, 64.

J.Y.-H. testified that within one minute, Ahmed again confronted her, shouting. RP 65. Both parties testified that while in the kitchen, they continued arguing, and Ahmed ordered J.Y.-H. to her room. RP 65, 80. J.Y.-H. refused to go. RP 43, 80. It was undisputed that Ahmed then grabbed the hood of J.Y.-H.'s sweatshirt and pulled upward, intending to physically force J.Y.-H. to her room. RP 43, 67. J.Y.-H. kicked her mother in the shin. RP 44, 69-70. However, the parties' descriptions of these events differed.

J.Y.-H. testified that when Ahmed grabbed her sweatshirt and pulled upward, her clothing pulled against the armpit of her upper right arm, causing her pain. RP 67. She also testified that because her mother was pulling upward on the hood of her sweatshirt, it was "hard to breathe." RP 69. She explained that she did not cry out or tell her mother about the pain because, "I didn't exactly want her to know, give her power that she would try to make it hurt more." RP 70. She stated that instead, "I gritted my teeth and told her to get off." RP 70. She clarified that by not wanting to give her mother power, she meant, "I was afraid of her, and I didn't want her to know that." RP 83.

Instead, while her mother still had a hold of the hood, J.Y.-H. unzipped her sweatshirt and slid out of it. RP 69. She then quickly scooted backward approximately one foot to where she had been sitting. RP 69. After she had scooted back,

> [Ahmed] came at me again ... She took a few steps forward and had her arm out. ... I was scared ... Because I've seen her angry before and I could tell on her face that she was angry, so when she came at me the second time, I kicked my foot out, and it connected with her ... [h]er shin."

RP 69-70; see also RP 82 (stating she was scared of Ahmed).

J.Y.-H. stated she did not hear any impact and Ahmed did not cry out or otherwise indicate she was in any pain. RP 74. Instead, Ahmed laughed at her, put up her hands, and walked away to call police. RP 70-

71. J.Y.-H. explained she did not leave the kitchen after the incident because Ahmed was already leaving the room, "So I figured I was safe there." RP 83.

Ahmed's version of events varied in the details. She summarized the incident stating, "I called [911] because my daughter had kicked me after I went to attempt to take her to her room because she refused to take herself to her room." RP 41.

Ahmed testified that J.Y.-H. "would not listen," was "cussing at me," was "very disrespectful" and refused to go to her room after being "requested" to do so. RP 41. She stated,

> [J.Y.-H.] was in the kitchen on the floor, and I said you have one more chance, go to your room. She refused to go to her room. She decided to cuss me out one more time. I said, all right [J.Y.-H.]. I said, then I will physically take you to your room.

RP 43.

Ahmed testified that she intended "to take her by the arm." RP 43. Later, contradicting herself, Ahmed testified that she intended to grab J.Y.-H. only by her clothing and not by her arm. RP 57. Regardless, she stated, "I went to grab her, but I only grabbed her coat at the time because she moved [and] ... slid out of her coat." RP 43. When she grabbed J.Y.-H.'s clothing, she pulled up. RP 55. Ahmed testified that J.Y.-H. must have unzipped her jacket and gotten out of it because, "All's I know is that I had

her jacket in my hand and I was going backwards." RP 55. Relieved of J.Y.-H.'s weight from the sweatshirt, Ahmed "took two steps back." RP 44, 55. According to Ahmed's testimony, J.Y.-H. then kicked her on the shin. RP 44. She looked at J.Y.-H., raised her hand, told J.Y.-H., "I'm done. I'm not gonna take this any further ... I'm not gonna fight with you anymore ... I have to call the police I can't take this abuse ... [,]" and she called the police. RP 44.

Ahmed testified that she advised a police officer at the scene that her shin hurt, but that she did not require any medical attention. RP 47.

J.Y.-H. testified that she had red marks on her upper arm as a result of her mother pulling up on her sweatshirt, and that these marks later turned to purple bruises lasting over a week. RP 72-77. She testified that she showed the red marks to a police officer on the scene, and showed a person who visited her in the jail, possibly a lawyer, but did not tell anyone else in detention for fear that it would make her look weak to the other juveniles. RP 72-73, 77.

Officer Larry Gabor also testified at the trial, regarding his arrival on scene and his observations and discussions with both parties. RP 18-24. During his onsite investigation, he looked at Ahmed's knee but saw no injuries of any kind. RP 23-24, 29. He did not photograph her knee because he believed there was no evidence to be captured. RP 24. Upon observing

J.Y.-H., he saw a "very slight pink mark on the inside of her upper right arm." RP 22. He did not photograph the mark because he believed it was too faint to be visible to the camera. RP 23. He testified he would not describe the mark as a bruise. RP 32. When asked if he would be surprised to learn that the mark developed into a bruise, he stated it was "in the realm of possibility ... but seemed unlikely" because it was "very faint." RP 33. However, he stated that he was not confident in his opinion, conceding that he was not medically trained and was not qualified as an expert regarding bruising. RP 31-32.

Over defense objection that the question improperly solicited both a legal conclusion and an opinion from an unqualified expert, the trial court permitted Officer Gabor to testify regarding his opinion of whether Ahmed and J.Y.-H.'s conduct conformed to the law. RP 24-26. Officer Gabor opined that Ahmed "was acting within the scope of the parental discipline rule, that the amount of force she used was reasonable, and the child, [J.Y.-H.], did not have the right to kick her mother." RP 25-26.

2. Closing Argument

In closing, the State conceded it bore the burden to disprove beyond a reasonable doubt J.Y.-H.'s claim of self-defense. RP 86, 94, 100. It argued that it met its burden because J.Y.-H. lacked credibility, was the first aggressor, did not have a reasonable fear of injury, and exceeded a

reasonable amount of force. RP 91-93, 101-03. Throughout its argument, the State emphasized that J.Y.-H.'s self-defense claim could not succeed given that Ahmed's conduct was within the bounds permitted by the parental discipline statute. E.g. RP 86-87, 100 (citing RCW 9A.16.100).

The defense argued that J.Y.-H. had established a claim of self-defense and the State had not met its burden to disprove the claim. RP 98-99. The defense emphasized that the case of State v. Graves controlled, in that it held the issue of whether a parent's conduct qualified as reasonable discipline was separate from, and did not preclude, J.Y.-H.'s claim of self-defense. RP 94-96 (citing State v. Graves, 97 Wn. App. 55, 61, 982 P.2d 627 (1999)).

3. Trial Court Findings and Conclusions

Supported by detailed oral findings of fact and conclusions of law, the trial court found J.Y.-H. guilty of fourth degree assault. CP 6; RP 103, 107. The trial court analyzed J.Y.-H.'s self-defense claim primarily with reference to the parental discipline statute. RP 103-07 (citing RCW 9A.16.100). The trial court also used diction that may have been a reference to the legal standard for resisting arrest by law enforcement. Compare RP 106-107 (considering "serious force" and "use of force to resist"); with WPIC 17.02.01 (use of force to resist arrest by law enforcement requires threat of "serious injury"). The court ultimately rejected J.Y.-H.'s self-

defense claim, reasoning that Ahmed's actions were within the parental discipline statute and "[p]arents and children do not stand on equal footing" before the law. RP 106-07.

J.Y.-H. was sentenced to four days of confinement, twelve months of community supervision, and treatment as recommended by her probation officer. CP 8, 10. She timely appeals. CP 11, 23.

C. ARGUMENT

THE TRIAL COURT ERRED WHEN IT REJECTED J.Y.-H.'S SELF-DEFENSE CLAIM ON IMPROPER GROUNDS.

RCW 9A.36.041(1) provides, "A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another." Because Washington's criminal code does not define "assault," courts apply the common law definition. State v. Jarvis, 160 Wn. App. 111, 117, 246 P.3d 1280 (2011) (citing State v. Stevens, 158 Wn.2d 304, 310-11, 143 P.3d 817 (2006)).

Recent case law recognizes:

> "'Assault is an intentional touching or striking of another person that is harmful or offensive, regardless of whether it results in physical injury.'" "[T]he intent required for assault is merely the intent to make physical contact with the victim, not the intent that the contact be a malicious or criminal act."

State v. Osman, 192 Wn. App. 355, 378, 366 P.3d 956 (2016) (quoting Jarvis, 160 Wn. App. at 119 (quoting State v. Tyler, 138 Wn. App. 120, 130, 155 P.3d 1002 (2007))).

Here, it was undisputed that J.Y.-H. kicked Ahmed on the shin. RP 44, 69-70. As such, the trial court properly found that all the elements of fourth degree assault by J.Y.-H. were met, and that the remaining inquiry was whether J.Y.-H.'s claim of self-defense would prevail. RP 103.

J.Y.-H. timely asserted a claim of self-defense before and during trial. RP 6, 94; CP 13.

> Self-defense is defined by statute, which provides in relevant part:
>
> > The use, attempt, or offer to use force upon or toward the person of another is not unlawful ... (3) Whenever used by a party about to be injured ... in preventing or attempting to prevent an offense against his or her person, ... in case the force is not more than is necessary[.]
>
> RCW 9A.16.020.

An "offense" undoubtedly includes an assault. Id. In addition to the categories of assault discussed above, the "well-settled" common law definition of assault also includes "'putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm.'" Jarvis, 160 Wn. App. at 117-18 (quoting State v. Walden, 67 Wn. App. 891, 893-94, 841 P.2d 81 (1992)) (citing State v. Garcia, 20 Wn. App. 401, 403; 579 P.2d 1034 (1978)).

The defendant bears the initial burden to "produce some evidence demonstrating self-defense." State v. Walden, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997) (citing State v. Janes, 121 Wn.2d 220, 237, 850 P.2d 495 (1993); State v. Acosta, 101 Wn.2d 612, 619, 683 P.2d 1069 (1984)). Such evidence must be examined "'from the standpoint of a reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees.'" Graves, 97 Wn. App. at 61 (quoting State v. Janes, 121 Wn.2d 220, 238, 850 P.2d 495 (1993)). This standard "incorporates both subjective and objective characteristics." Id. (citing Janes, 121 Wn.2d at 238). Once a defendant establishes a self-defense claim, the burden shifts to the State to disprove self-defense beyond a reasonable doubt. Id. at 61-62 (citing State v. Miller, 89 Wn. App. 364, 367–68, 949 P.2d 821 (1997)).

Here, the trial court erred by applying an incorrect legal framework. The trial court's factual findings also were tainted by this improper legal analysis. If analyzed correctly, the record shows J.Y.-H. established a claim of self-defense and the State did not disprove this defense beyond a reasonable doubt.

1. The court erred in applying the parental discipline statute.

The trial court erred in analyzing J.Y.-H.'s self-defense claim with reference to RCW 9A.16.100, Washington's parental discipline statute. In

State v. Graves the Court of Appeals held that the issue of whether a parent's use of force against his child was reasonable was "a completely separate inquiry" from the child's self-defense claim against the parent. 97 Wn. App. at 62-63 (citing RCW 9A.16.100).

Despite this, the trial court reasoned that as a first step in its analysis, J.Y.-H.'s self-defense claim required consideration of the parental discipline statute. RP 103-04 (citing RCW 9A.16.100).

> The parental discipline statute provides in relevant part:
>
> It is the policy of this state to protect children from assault and abuse and to encourage parents ... to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent ... for purposes of restraining or correcting the child. ...
>
> The following actions are presumed unreasonable when used to correct or restrain a child: ... (4) interfering with a child's breathing; ... or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive.

RCW 9A.16.100 (emphasis added).

With this statute in mind, the court made the following factual findings:

> Evidence on both sides of this case was that Ms. Ahmed was attempting to get [J.Y.-H.] to go to her room, that [J.Y.-H.] was resisting, and that at a certain point, in a further effort to

> get [J.Y.-H.] to go to her room, Ms. Ahmed grabbed the sweatshirt and pulled at [J.Y.H.] in order to get her to move in the direction of the bedroom. It was at that point that [J.Y.-H.] continued to resist her mother, unzipped the sweatshirt, and allowed it to be pulled off of her, but in the process some marks apparently were left on [J.Y.-H.]

RP 104.

Critical to the analysis is that the trial court found Ahmed initiated physical contact with J.Y.-H. by grabbing her sweatshirt and pulling on it in an effort to physically take J.Y.-H. to her room, and that marks were left as a result of the physical interaction. RP 104.

The court then considered Graves, stating, "I haven't had a chance to read that case, but I'm looking at the respondent's recitation of the facts." RP 104 (citing Graves, 97 Wn. App. 55). The court reasoned that Graves was factually distinguishable, and made the following findings and conclusions:

> What I have here is a mother using a fairly minimal amount of force to try to correct behavior. Firstly, it's clearly within the parental discipline statute. If it left marks – and Officer Gabor testified that he saw marks – they were minor and temporary. Did they result in a bruise? Possibly. Did that make them other than temporary? I don't think so. The force used appears from the context in which it was used was reasonable and moderate. So clearly the discipline that was used was within the statute.

RP 105 (emphasis added).

This shows that the trial court's analysis emphasized the "amount of force" used by Ahmed and the nature of the resulting injuries. RP 105. This

emphasis arose out of the trial court's improper focus on whether Ahmed's actions qualified as "discipline" within the bounds of RCW 9A.16.100.

The trial court then concluded that as a matter of law, "the question ... apart from whether or not the parental discipline was within the statutes, was the use of force by the young person reasonable such that it would result in the self-defense finding that would take the case out of an assault?" RP 105.

> The court then made the following findings of fact:
>
> There has been no evidence other than the pulling of the sweatshirt to raise a reasonable basis for fear of infliction of serious force against [J.Y.-H.] What apparently she was concerned about was Ms. Ahmed continuing to try to force her to go to her bedroom. She attempted to do that by pulling on her sweatshirt. When the sweatshirt was removed, she was probably going to come back and maybe grab her by the arm and try to make her go to her room.

RP 106 (emphasis added).

Although the trial court discusses the question of J.Y.-H.'s self-defense claim as "apart from" the question of parental discipline, it is clear from context that the court improperly blended the two analyses together. See RP 105-06. The court's findings discuss whether J.Y.-H. feared "infliction of serious force," suggesting that infliction by Ahmed of less-than-serious force was not sufficient to warrant self-defense. RP 106 (emphasis added). The court found that Ahmed had used force against J.Y.-H. by pulling her sweatshirt. RP 106. The court also found J.Y.-H. was

"concerned" Ahmed would continue using force. RP 106. This shows J.Y.-H. had a subjective fear that Ahmed would again use force against her. The court also found Ahmed "was probably going to come back and maybe grab her by the arm and try to make her go to her room." RP 106. This shows the court found that J.Y.-H.'s fear of continued force was objectively reasonable.

As discussed above, the trial court found Ahmed had already used force against J.Y.-H. immediately prior, that J.Y.-H. had suffered minor injury, that subjectively J.Y.-H. feared Ahmed would use force against her again, and that objectively Ahmed likely was going to use force against her again. Given those findings, the court should have concluded J.Y.-H. had a reasonable fear of additional injury.

However, the court concluded:

> So I don't see that there was a reasonable basis or even that I can find that subjectively [J.Y.-H.] believed she was going to be hurt sufficient to raise the self-defense defense to an assault.

RP 106 (emphasis added).

This conclusion, particularly the word "sufficient," again shows the court's improper focus on the amount of force used by Ahmed and the amount of resulting or potential injury. RP 106. The court's conclusion, that J.Y.-H. did not believe she would be hurt seriously enough, shows the court applied an improper legal standard.

The trial court went on to reason that "Washington law allows parents to use physical force against children" but that such force is "ultimately not useful" to the parent or child. RP 106.

In summary, the court concluded:

> [T]he law gives parents the right to control their children. Parents and children do not stand on equal footing. I don't care if you're 13, 14, 15, 16, or 17 years old. If you're in your parent's home, your parent has the right to control your behavior, and they have the right to use moderate force to try to control behavior. That's what happened here.

RP 107 (emphasis added).

The court's summary illustrates again, that the focus of the court's analysis was on whether the parent's use of force was reasonable discipline, rather than on J.Y.-H.'s claim of self-defense.[1] As a result, all of the trial court's findings which purport to find that J.Y.-H. failed to establish actual and reasonable fear of force or harm, were tainted by the flawed legal analysis. C.f. RP 106-07 (findings as assigned error in part II.4 above). Rather, the trial court was concluding that viewed through the lens of the parental discipline statute, J.Y.-H. needed to establish that she feared some harm or injury above that permitted by the statute, and that she had failed to do so.

[1] It appears the trial court may have been taking its lead from Officer Gabors, who was permitted to testify that in his opinion the law, specifically "parental discipline rule," authorized Ahmed to use force against J.Y.-H., but that the law did not authorize J.Y.-H. to use force against Ahmed. RP 24-26.

The court's summary also shows that this emphasis was bolstered by the trial court's personal value judgment that parents and children are not equal before the law. See RP 107. However, as discussed below, Washington law does not support the proposition that juveniles have no right to defend themselves against a parent's use of force or intentional infliction of injury. See Graves, 97 Wn. App. at 63-64.

In Graves, the trial court made precisely the same error and the Court of Appeals reversed the juvenile's assault conviction on appeal. Id. at 63-64. There, an argument between a parent and a teenaged child began in much the same way. The son, Ricco Graves, Jr. ("Ricco"), and his father, Ricco Graves ("Graves"), argued over chores, phone use, and Ricco's absences from the home without prior permission. Id. at 57. The argument turned physical when the parent initiated physical contact. Id. at 57-58. The son was later charged with fourth degree assault. Id. at 56. Both Graves and Ricco testified. Id. at 57-60. Graves stated that when Ricco refused to do chores, he called his son a "punk" and grabbed him by the chin, precipitating a bout wrestling between the two. Id. at 57-58. Graves got up to leave and again ordered Ricco to complete his chores. Id. at 58. When Ricco refused, Graves put Ricco in a headlock while his wife called police with the intention of having their son removed from the home. Id. at 58.

Ricco also testified, stating his father's tone of voice was "louder than usual," his demeanor had changed when he walked into his room, and that "[Graves] came on me, and I thought he was going to do something." Id. at 59. When asked why he had grabbed his father around the waist during the second altercation, Ricco stated, "Because he had me at the top, and I didn't see no—I wanted to get out of there. I didn't want him to be on top of me. I said: I just don't want you to put your hands on me." Id. at 60. Ricco further stated that his father pushed him in the face and he couldn't see, "so I was trying to get his hands off of me." Id. at 60.

The trial court "found beyond a reasonable doubt that the son, Ricco, had committed an unlawful and intentional touching against Graves." Id. at 61. The trial court reasoned that "although Graves admitted initiating the incident, '[Ricco] had no right to self-defense in that a parent has a right to use reasonable force to discipline a child. The force used by Mr. Graves, Sr. during the physical contact with his son was reasonable and lawful.'" Id. (appellate court quoting trial court). The trial court also concluded that in the alternative, the State had disproved Ricco's self-defense claim. Id.

On appeal, the court examined the definition of assault and the law on self-defense. Id. at 61-62. The court first considered the State's argument that Ricco's testimony was not sufficient to establish his claim of self-defense. Id. at 62. The court noted Ricco had testified that his father

had entered the room angrily and that, "He came on me, and I thought he was going to do something." Id. at 62. The court considered it relevant that Ricco had testified his actions during the wrestling bout were motivated by a desire to "[g]et him off me, and that his father then grabbed him and put him in a headlock. Id. The court also found it relevant that Graves had admitted to initiating physical contact in both incidents. Id. The court concluded Ricco's testimony and Graves's admission was sufficient to establish his self-defense claim. Id.

The State argued that if Graves's actions could be characterized as reasonable parental discipline, then his son's claim of self-defense was precluded by RCW 9A.16.100. Id. at 62. The Court of Appeals rejected this claim, reasoning, "the question of whether the father's own use of force was reasonable is a completely separate inquiry from whether the child was initially entitled to raise the claim of self-defense." Id. at 62-63 (emphasis added). The proper legal inquiry "should be on the juvenile defendant to determine whether the defendant has 'produc[ed] "some evidence demonstrating self-defense ... ."'" Id. at 63 (quoting Miller, 89 Wn. App. at 368, 949 P.2d 821 (quoting State v. Walden, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997))).

The court noted "the State has provided no authority for the position that a juvenile defendant is altogether precluded from raising self-defense

where the parent admits use of force but claims parental discipline." Id. at 63. The court concluded "[t]here is no reason to depart from this standard simply because the defendant is a juvenile charged with assaulting a parent." Id.

The appellate court also reversed the trial court's alternative conclusion that the State had disproven self-defense. Id. Reviewing the record, the court noted that Graves felt Ricco had "crossed the line" and so walked into his room, called him a "punk" and grabbed him by the chin. Id. During the second incident, Graves again admitted he had initiated physical contact when he "put a hold on [Ricco]" to subdue him. Id. The court also noted that although Ricco testified that he was not "scared" or in pain during the incidents, he thought Graves "was going to do something" and he was trying to get Graves off of him. Id. The court concluded that based on the record, the State had not disproven self-defense. Id. As a result, Ricco's conviction could not stand. Id.

The facts of J.Y.-H.'s trial are similar to Graves in all important respects. In both instances, the parent was motivated by an apparently legitimate desire to get his or her teenaged child to stop using a phone, stop speaking disrespectfully, and do as he or she was told. E.g. RP 41, 52, 61; Graves, 97 Wn. App. at 57. Like Graves, here it was undisputed that the parent initiated physical contact. RP 43, 55, 67, 104. As in Graves,

J.Y.-H. testified regarding her reasonable fear, and testified that her parent's demeanor suggested her parent was angry. RP 69-70, 82-83. In Graves, the parent did initiate physical contact with the juvenile a second time. Graves, 97 Wn. App. at 58-60. Here, the court found that Ahmed was likely going to use force against J.Y.-H. again, and that J.Y.-H. believed this to be the case as well. See RP 106. Here, there is more evidence than in Graves that injury actually resulted. The appellate court's discussion in Graves did not discuss whether the son, Ricco, suffered any injuries, minor or not. Here, the court found minor injuries resulted from the initial physical interaction. See RP 105 (noting Officer Gabor "saw marks"). This supports J.Y.-H.'s claim that she had a reasonable fear injury would result from a second interaction.

The trial court's analysis, that Graves is factually distinguishable, ignores these similarities, as well as the holding: a juvenile may still have a valid self-defense claim regardless of whether a parent's use of force was reasonable parental discipline under RCW 9A.16.100. RP 104-05; Graves, 97 Wn. App. at 62-63. Rather than viewing J.Y.-H.'s self-defense claim in light of the parental discipline statute, the trial court should have applied the well-established legal framework used for all general self-defense claims. Graves, 97 Wn. App. at 62-63.

2. To the extent the trial court applied the standard for resisting arrest by a law enforcement officer, this was also in error.

In considering J.Y.-H.'s self-defense claim, the trial court concluded, "The use of force to resist is an assault unless there is a reasonable belief that you're going to be injured. I don't find that that was present here." RP 107 (emphasis added). Neither the court nor either party appears to have cited authority for a proposition regarding "use of force to resist." Id.

The court's language here appears to be a summary of its parental discipline analysis, discussed above. From the court's discussion immediately prior to this statement, the court appears to be reasoning that unless J.Y.-H. feared some use of force or injury above that which the parental discipline statute authorized, J.Y.-H. would not be authorized to defend herself.

However, the law of self-defense authorizes a person to defend oneself against any "offense," whether that offense is merely an "offensive" touching or an actual injury of any severity. RCW 9A.16.020; Osman, 192 Wn. App. 355, 378, 366 P.3d 956 (2016) (quoting Jarvis, 160 Wn. App. at 119 (quoting Tyler, 138 Wn. App. at 130)). Thus, the court's statement here, that a person cannot resist force by another unless that person fears actual injury, is an incorrect statement of law. Id.

Additionally, here the trial court found the previous physical interaction did result in injury, in the form of marks left on J.Y.-H.'s upper arm which "[p]ossibly" also led to bruising. RP 104-05. The trial court also found Ahmed intended to use force again, and "was probably going to come back and maybe grab her by the arm ... ." RP 106. If taken literally, the court's factual finding that J.Y.-H. did not fear actual injury, is contradicted by its own previous, well-supported findings. It would not be logically coherent for the trial court to find J.Y.-H. did not fear Ahmed would inflict similar marks on her arm by grabbing her again. Rather, the court's finding appears to be summary statement of its earlier flawed analysis, in which it concludes J.Y.-H. did not fear injury or force above that authorized by the parental discipline statute.

An alternative explanation for the trial court's "use of force to resist" language is that the court was improperly applying the standard from WPIC 17.02.01, which provides in relevant part:

> A person may [use] ... force [to resist] ... an arrest [by someone known by the person to be a [police] [correctional] officer] only if the person being arrested is in actual and imminent danger of serious injury from an officer's use of excessive force.

Washington courts have held that in the context of resisting arrest by a police or correctional officer, a person may use force to resist only if faced with serious injury or death, not if "faced only with a loss of freedom." State

v. Holeman, 103 Wn.2d 426, 693 P.2d 89 (1985) (serious injury or death); State v. Valentine, 132 Wn.2d 1, 21, 935 P.2d 1294 (1997) (not "loss of freedom").

The trial court's diction suggests that it may have been analyzing J.Y.-H.'s self-defense claim in light of this legal standard. The legal standard applicable to resisting arrest by law enforcement specifically references "serious injury." WPIC 17.02.01; see also Holeman, 103 Wn.2d 426. This may explain the court's emphasis on the amount of force used by Ahmed, and whether J.Y.-H. had a "fear of infliction of serious force." RP 106 (emphasis added).

Regardless of its source, the parental discipline statute or jurisprudence regarding resisting arrest by law enforcement, there does not appear to be any support in case law for the application of this legal standard to resisting force used by a parent. To the extent the trial court also applied this legal standard to J.Y.-H.'s self-defense claim, it was also in error. There is no special juvenile self-defense exception prohibiting a juvenile from resisting force or injury where inflicted by a parent. See Graves, 97 Wn. App. at 62-63. As indicated in Graves, the trial court should have instead, simply applied the general self-defense legal standard to consider J.Y.-H.'s claim. Id.

3. The State did not disprove J.Y.-H.'s self-defense claim beyond a reasonable doubt.

Here, J.Y.-H. met her initial burden to offer "some evidence" tending to support a self-defense claim. Walden, 131 Wn.2d at 473.

J.Y.-H.'s testimony provided evidence that J.Y.-H. had a reasonable fear of injury, and responded in self-defense. She testified that Ahmed grabbed her sweatshirt and pulled up, causing pain and interfering with her breathing, she told Ahmed "to get off," she slipped out of her sweatshirt and scooted back to her seated position on the kitchen floor, but Ahmed then "came at her again," "took a few steps forward and had her arm out." RP 67-70.

J.Y.-H. established fear Ahmed would hurt her again and her motivation for kicking out with her foot. At the point when J.Y.-H. slipped out of her sweatshirt, "[b]ecause I've seen her angry before and I could tell on her face that she was angry." RP 69-70. She was "afraid of [Ahmed]," and did not cry out or tell her that she was hurt when she pulled up on the sweatshirt. RP 70, 82-83. She did not want her mother to have "power" over her, because she was afraid Ahmed would use that information "to make it hurt more." RP 70, 82-83. As a result of this fear, "when she came at me the second time," J.Y.-H. kicked out with her foot, which connected with Ahmed's shin, to prevent Ahmed from grabbing her again. RP 69-70.

Much of Ahmed's testimony also supports J.Y.-H.'s self-defense claim. She testified that she told J.Y.-H., "I will physically take you to your room." RP 43. Contradicting herself, Ahmed testified both that she intended to grab J.Y.-H.'s arm and that she only intended to grab her clothing. RP 43 (arm), 57 (clothing). Regardless, she did not dispute that she grabbed J.Y.-H.'s sweatshirt and pulled up, intending to physically take her to her room. RP 43. Although Ahmed denied pulling "hard," she also admitted that when J.Y.-H. slipped out of her sweatshirt, Ahmed involuntarily took two steps backward from the resulting absence of J.Y.-H.'s weight in the sweatshirt. RP 44-55. This suggests Ahmed was not pulling gently.

Taken together, the evidence at trial was more than sufficient for J.Y.-H. to meet her burden of producing some evidence tending to show self-defense.

Once a defendant establishes a self-defense claim, the burden shifts to the State to disprove self-defense beyond a reasonable doubt. Graves, 97 Wn. App. at 61-62 (citing State v. Miller, 89 Wn. App. 364, 367–68, 949 P.2d 821 (1997)). Here, the State conceded multiple times that it bore the burden to disprove J.Y.-H.'s self-defense beyond a reasonable doubt. RP 86, 94, 100. The State then argued several legal theories to attack J.Y.-H.'s

self-defense claim. However, none was proven beyond a reasonable doubt. Ultimately, the State did not meet its burden.

a) The State failed to prove J.Y.-H. was the first aggressor.

The State argued J.Y.-H. was not entitled to self-defense because she was the first aggressor whose "acts and conduct provoked or commenced the fight." RP 91 (quoting WPIC 16.04) (internal quotations omitted in original). In support of this theory, the State argued J.Y.-H. "fail[ed] to do anything she was requested to do" and "escalated it by cursing at her mother ... in front of the other children" and so "created the whole situation." RP 92.

"[W]ords alone do not constitute sufficient provocation" to justify application of the first aggressor doctrine. State v. Riley, 137 Wn.2d 904, 911, 976 P.2d 624 (1999); see also State v. Stark, 158 Wn. App. 952, 960, 244 P.3d 433 (2010) (holding written words in restraining order are insufficient provocation). This is true even where the words are "insulting." Riley, 137 Wn.2d at 911.

In so holding, the Riley Court reasoned "the initial aggressor doctrine is based upon the principle that the aggressor cannot claim self-defense because the victim of the aggressive act is entitled to respond with lawful force." Id. at 912 (emphasis added). As a matter of logic, a failure

to act cannot be an "aggressive act." Id. Thus, even if true, the State's argument that J.Y.-H.'s failure "to do anything she was requested to do" is also insufficient as a matter of law to establish her as the first aggressor. RP 92.

Here, it was undisputed that Ahmed, not J.Y.-H., was the first to initiate physical contact by grabbing J.Y.-H.'s sweatshirt and attempting to pull her to her room. RP 43 (Ahmed), 67 (J.Y.-H.), 104 (trial court's oral finding). The State's argument—that J.Y.-H.'s verbal responses or failure to follow her mother's orders make her the first aggressor—is not supported by Washington jurisprudence. See Riley, 137 Wn.2d 904, 911; Stark, 158 Wn. App. at 960. The trial court never addressed the first aggressor argument in its conclusions. This shows the trial court correctly concluded this doctrine did not apply.

b) The State failed to prove J.Y.-H. lacked a reasonable fear of injury.

The State also argued J.Y.-H. lacked a reasonable fear of injury. RP 93, 102-03. However, in light of the trial court's factual findings, this argument cannot stand.

The trial court found the following. J.Y.-H. had sustained a minor injury, i.e. marks that possibly resulted in temporary bruising. RP 104-05. Ahmed was moving toward J.Y.-H. again, intending to use force again,

specifically by grabbing her arm to physically move her. RP 106. J.Y.-H. was afraid Ahmed was going to use force against her again, to grab her arm and try to take her to her room. RP 106.

Given these factual findings, the trial court should have concluded that as a matter of law, J.Y.-H. had established a reasonable fear of injury. Instead, the court reasoned, "There has been no evidence other than the pulling of the sweatshirt to raise a reasonable basis for fear of infliction of serious force against [J.Y.-H.]" RP 106 (emphasis added). The court concluded, "I don't see that there was a reasonable basis or even that I can find that subjectively [J.Y.-H.] believed she was going to be hurt sufficient to raise the self-defense defense to an assault." RP 106 (emphasis added).

As discussed above, the court's discussion shows it had concluded J.Y.-H. had a reasonable fear of injury, but the court believed the injury feared was not serious enough and J.Y.-H. did not have the legal right to attempt to avoid it. This emphasis on the severity of injury was inappropriate, and arose out of application of an incorrect legal framework.

The fact that J.Y-H. feared only minor injury, but did not fear serious injury, should not have been relevant to this part of the analysis. In Washington, a person who is neither the first aggressor nor a trespasser generally has no duty to retreat before using self-defense. See e.g. State v. Wooten, 87 Wn.App. 821, 825, 945 P.2d 1144 (1997) (citing State v. Allery,

101 Wn.2d 591, 598, 682 P.2d 312 (1984) (holding wife had no duty to retreat where feloniously assaulted by husband in her home)). It follows that a person also has no duty to sustain minor injury before defending oneself. To conclude otherwise would contravene the explicit language of the self-defense statute, which permits a person "about to be injured" to use self-defense to "prevent an offense against his or her person." RCW 9A.16.020.

The record supports, and the trial court properly found, that J.Y.-H. had suffered minor injuries and was responding in an effort to avoid additional similar use of force against her person. RP 104-06. As such, the trial court should have concluded J.Y.-H. had a reasonable fear of injury.

In an effort to disprove this conclusion, the State argued that J.Y.-H. was not credible and kicked Ahmed out of anger, not fear. RP 91-92, 101-02. The State argued Ahmed's testimony showed she was "not even doing anything at the time," other than "reaching out to help [J.Y.-H.] up," and so J.Y.-H. could not be responding in self-defense. RP 93, 103. However, this version of events was not supported even by Ahmed's testimony. Ahmed testified that J.Y.-H. kicked her just after Ahmed had taken two steps backward. RP 44. Ahmed stated that in response, she raised her arms, told J.Y.-H. she was not going to fight anymore and then left to called police. RP 44. Ahmed did not admit to taking two steps toward J.Y.-

H. right before J.Y.-H. kicked her, and also did not state that she reached out to try to help J.Y.-H. up.

Ultimately, the trial court found that "[w]hen the sweatshirt was removed, [Ahmed] was probably going to come back and maybe grab her by the arm and try to make her go to her room." RP 106. This is inconsistent with Ahmed's statement that J.Y.-H. kicked her immediately after Ahmed took two steps backward, and shows the trial court did not find Ahmed's testimony credible with respect to her actions and intentions just prior to being kicked.

Particularly given the trial court's findings, the State failed to prove beyond a reasonable doubt that J.Y.-H. lacked a reasonable fear of injury.

c) The State failed to prove J.Y.-H. exceeded reasonable force.

The State also argued that J.Y.-H.'s self-defense claim failed because she exceeded a reasonable amount of force. RP 93. Seen more accurately, this appears to be a variant of the State's argument that J.Y.-H. was not entitled to use any force at all against a parent. In closing, the State reasoned that "self-defense was not reasonable ... required or warranted in this particular case" and relied heavily on the argument that Ahmed "was acting within her lawful right as a parent." RP 100. The State's argument suggests that a juvenile is lawfully entitled to raise a self-defense claim only

if the parent exceeds the amount of force or injury permitted under the parental discipline statute. See RP 100-103. As stated above, this argument has already been rejected by the Court of Appeals. Graves, 97 Wn. App. at 62-63.

Additionally, given the record and the trial court's proper findings of fact, the State cannot prove beyond a reasonable doubt that J.Y.-H. exceeded reasonable force. J.Y.-H. testified she did not hear her foot make contact when she kicked Ahmed, that Ahmed did not cry out or otherwise indicate any pain, and that Ahmed laughed and left the room to call police in response. RP 70-71, 74. Ahmed testified that she told Officer Gabor that her shin hurt, but she did not require any medical attention. RP 47. Ahmed also testified that the kick left a "red mark" on her leg, but conceded it was "very light." RP 47. However, Officer Gabor testified that although Ahmed claimed to have been kicked in the knee and although he checked for injuries, he did not observe any mark on Ahmed. RP 23-24. In contrast, he testified that he did observe "a very slight pink mark" on J.Y.-H., too slight to show up in a photograph. RP 22-23. This suggests that if there were any marks, even slight, on Ahmed's leg, he would have seen it.

Even if Ahmed's testimony is believed over J.Y.-H. and the officer, at most, J.Y.-H. inflicted a similar amount of injury—minor marks and transient pain—on Ahmed as she had just sustained from the previous

interaction. As such, the State's claim that J.Y.-H. exceeded a reasonable amount of force in self-defense is not proven beyond a reasonable doubt.

Given the record and those factual findings supported by the record, the State did not prove J.Y.-H. was the first aggressor, lacked a reasonable fear of injury, exceeded reasonable force, or was otherwise not entitled to self-defense. Thus, the State did not meet its burden to disprove J.Y.-H.'s self-defense claim beyond a reasonable doubt. Reversal of the J.Y.-H.'s assault conviction is the proper remedy. Graves, 97 Wn. App. at 63.

D. CONCLUSION

By considering J.Y.-H.'s self-defense claim primarily in light of the parental discipline statute, the trial court applied an improper legal framework. RP 103-06; Graves, 97 Wn. App. at 62-63. To the extent the trial court may also have imported the resisting arrest standard into its legal analysis, this was also in error. The court's erroneous findings, predicated upon its improper legal analysis, should also be set aside in favor of those factual findings also made by the court that are supported by the record. The record shows J.Y.-H. met her burden to establish a claim of self-defense and the State did not disprove this claim beyond a reasonable doubt.

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J.Y.-H. respectfully requests that this Court reverse her fourth degree assault conviction.

DATED this 18th day of April, 2017.

Respectfully submitted,

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Case Name: J. Y.-H.

Court of Appeals Case Number: 49282-2

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